IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2848 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

K B VADUKAR

Appearance:

1. Special Civil Application No. 2848 of 1992

MR HL JANI, AGP. for Petitioners.

MR MD RANA for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 07/03/2002

ORAL JUDGEMENT

1 The present petition under Article 227 of the Constitution of India is filed by the State of Gujarat, through the Secretary, Co-operation Department and the

another petitioner is The Registrar, Co-operative Societies, Gandhinagar. The petitioners have challenged the order dated 8/7/1991 passed by the Gujarat State Service Tribunal in Appeal No.103 of 1991.

2 The respondent was employed as Junior Clerk on 1/4/1962 and thereafter was promoted from time to time and was serving as Head Clerk with effect from 8/7/1991. The respondent was denied the promotion to the post of Office Superintendent in light of certain adverse remarks contained in various annual confidential reports as per the say of the petitioners. It appears that the respondent approached the Appellate Authority viz. Additional Registrar, Co-operative Societies, Gujarat State and the said appeal/representation was disposed of by the said authority on 15/1/1991. In the meantime on 17/1/1991 Departmental Promotion Committee met and took a decision to promote some of the eligible employees while denying promotion to six persons including the respondent. It is against the aforesaid order of the Departmental Promotion Committee that the respondent preferred appeal before the Gujarat Civil Services Tribunal.

3 The Tribunal after hearing both the sides and after taking into consideration the entire service record of the respondent-employee came to the conclusion that the reliefs prayed on behalf of the petitioners on certain so called adverse remarks during the course of hearing did not form part of the parawise remarks submitted in reply to the appeal memo. Therefore, the Tribunal thought it fit not to consider the said submission in relation to such adverse remarks said to have been communicated on 17/11/1987. The Tribunal has further recorded the fact that the Advocate of the petitioners was not in a position to show as to what had happened after communication of the said remarks. However, more importantly, the Tribunal came to the conclusion that the respondent employee was entitled to promotion in light of the fact that the Departmental Promotion Committee had not assigned any reasons whatsoever for omitting the respondent from the list of persons entitled to be promoted. The Tribunal has further recorded the fact that it was alive to the legal position as regards the fact that it was not sitting in judgement over the decision of the Departmental Promotion Committee but in light of the fact that the respondent had been denied promotion without any reason whatsoever the Tribunal allowed the appeal. As per the operative portion of the order of the Tribunal the respondent employee was directed to be promoted as Office

Superintendent with the grade of Rs.1640-2900 with deemed date of his immediately succeeding junior without allowing any arrears for the intervening period.

4 After hearing Mr.H.L.Jani, learned Assistant Government Pleader appearing on behalf of the petitioner and Mr.M.D.Rana, appearing on behalf of the respondent there are no reasons to interfere with the order of the Tribunal, as the Tribunal has taken into consideration all the relevant facts on record. The jurisdiction of the Court in a petition under Article 227 of the Constitution is limited and it is well settled that if on the same set of facts a different conclusion was possible, even then the Court should desist from interfering unless and until the decision of the Tribunal is shown to be one which no reasonable man would arrive at in light of the facts of the present case as are on record, but that is not the present case. Hence, the petition fails. Rule is discharged. Interim relief stands vacated. There shall be no order as to costs.

5 During the course of hearing the attention of the Court was drawn to the fact that the respondent employee has already retired during the pendency of this petition. The petitioner State is directed to implement the order of the Tribunal within a period of eight weeks from today.

Sd/-

(D.A.Mehta, J)

m.m.bhatt